



## OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERALHonorable H.L. Washburn  
County Auditor  
Houston, Texas

Dear Sir:

*Harris Co.*  
Opinion No. 0-2896  
Re: Commissioners' Courts -  
Expenditures of county funds  
for printing pamphlets not  
authorized.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"The County Commissioner of Precinct 1 in this County has announced his intention of writing a series of pamphlets, numbering about 20, on different phases of County government procedure and operation for distribution to a small group of citizens and for delivery to any citizen desiring a copy, and requests that the expense incident to the dictation, preparation, printing, and distribution of such pamphlets be paid from public funds of Harris County.

"I attach Pamphlet 1, which you will observe has been copyrighted by the Commissioner, and all persons, including county officials, are prohibited from reproducing any part of the document without written permission of the author. I have examined the document and do not find that it constitutes a report required by law to be made.

"I have carefully examined the statutes and find no legal requirement for reports of this nature from a county commissioner to the public, to the court, or to any person. I do not find that a commissioner is authorized to prepare a budget or to lay down the procedure therefor, but the budget in this County is prepared by the

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Auditor and adopted by the Commissioners' Court. I do not find that the Commissioners' Court itself is authorized to prepare reports of this nature, and no relation is seen between this document and the maintenance and construction of public roads. I believe that the Commissioners' Court itself has authority to incur any expense reasonably incident to the maintenance and construction of County roads, but it does not appear that this expense is necessary thereto or even reasonably incident to anything connected with the maintenance or construction of roads.

"Official reports are required of certain officers, but none of this type are required of a County commissioner or from the Commissioners' Court. Certain officers have the right to prescribe the system of accounts, budgets, and procedure, but such authority is not vested in the Commissioners' Court.

"Without a discussion of the multitude of authorities on the subject, it is reasonably safe to say that the law in this State is that commissioners' courts, while courts of general jurisdiction within the sphere of their activities, have only such authority as is given by the Constitution and statutes of the State, or such as may be reasonably incident to carrying out an express authority. Therefore, it is not to be implied that a county commissioner or the commissioners' court itself has the authority to issue at public expense documents of the type hereto attached.

"If any county officer is permitted to write, print, and distribute documents of this type, a precedent would be established for permitting the Assessor and Collector of Taxes to write a volume on the question of taxation, the County Engineer to write one upon questions of engineering and road building, the County Health Officer to write one upon public health, and, in fact, the bars would be let down by implication,

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incurring a great deal of expense from public funds which obviously does not represent a public purpose and does not flow from any statutory authority or requirement.

"Am I, as County Auditor, under the requirements of the County Auditors' Law, authorized to pay claims so incurred and approve warrants therefor from public funds?

"I have duly submitted the question to the District Attorney and to Mr. Ernest Knipp, an attorney of Houston, and requested their views. As a matter of information, I attach copies of the opinions given me."

We have also carefully examined and considered the enclosed pamphlet and enclosed copies of opinions rendered you by Honorable Marshall T. Anderson, Assistant District Attorney of Harris County, Texas, and by Honorable Ernest A. Knipp, attorney of Houston, Texas, upon the question, which hold that the commissioners' court has no authority to incur the proposed expenditure and that you, as county auditor, should not approve the warrants therefor.

We quote from 11 Texas Jurisprudence, pages 563-4-5, as follows:

"Counties, being component parts of the state, have no powers or duties except those which are clearly set forth and defined in the Constitution and statutes. The statutes have clearly defined the powers, prescribed the duties, and imposed the liabilities of the commissioners' courts, the medium through which the different counties act, and from those statutes must come all the authority vested in the counties....

"....Commissioners' courts are courts of limited jurisdiction, in that their authority extends only to matters pertaining to the general welfare of their counties and that their powers are only those expressly or impliedly conferred upon them by law, that is, by the Constitution and statutes of the state...."

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The courts of Texas have repeatedly held that county commissioners' courts may exercise only such authority as is conferred by the Constitution and statutes of this state. There are abundant authorities to this effect. We cite the following:

Article 5, Section 18, Texas Constitution;  
 Article 2351, Revised Civil Statutes of Texas;  
 11 Texas Jurisprudence, pages 563-566;  
 Bland v. Orr, 39 SW (2d) 558;  
 Nunn-Warren Publishing Co. v. Hutchinson County,  
 45 SW (2d) 651;  
 Hogg v. Campbell, 48 SW (2d) 515;  
 Landman v. State, 97 SW (2d) 264;  
 El Paso County v. Klam, 106 SW 393;  
 Howard v. Henderson County, 116 SW (2d) 791;  
 Dobson v. Marshall, 118 SW (2d) 621;  
 Mills County v. Lampasas County, 40 SW 404.

After a most careful search we have been unable to find any statutory authority, express or implied, which would authorize the proposed expenditure.

We think that the opinion and reasoning expressed by you in your request, quoted above, is logical and sound. We think that the conclusion reached by you and the attorneys above named, holding the proposed expenditure to be unauthorized, is eminently correct.

Your question is therefore answered in the negative.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Wm. J. Penning*

Wm. J. Penning  
 Assistant

WJF:AW

APPROVED DEC 3, 1940

*Gerard B. Mann*

ATTORNEY GENERAL OF TEXAS

